

Message Text

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ACTION EB-11

INFO OCT-01 AF-10 ARA-16 EA-11 EUR-25 NEA-10 RSC-01 IO-14

ISO-00 CIAE-00 DODE-00 PM-07 H-03 INR-10 L-03 NSAE-00

NSC-10 PA-04 PRS-01 SPC-03 SS-20 ACDA-19 SSO-00

NSCE-00 INRE-00 COME-00 FMC-04 CG-00 COA-02 DLOS-06

OIC-04 SCI-06 CEQ-02 EPA-04 NSF-04 OMB-01 INT-08

JUSE-00 AGR-20 AEC-11 DRC-01 /252 W

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O 192123Z OCT 73

FM AMEMBASSY LONDON

TO SECSTATE WASHDC IMMEDIATE 4971

INFO USMISSION USUN NEW YORK IMMEDIATE

AMEMBASSY BRUSSELS IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 03 LONDON 12227

BRUSSELS FOR TRAIN

E.O. 11652: GDS

TAGS: IMCO, PBOR, SENV, ETRN

SUBJECT: IMCO: MARINE POLLUTION CONFERENCE - ARTICLE 8

REF: LONDON 12161

1. SUMMARY: RECOMMEND DEPARTMENT COMMENCE DIPLOMATIC EFFORT IN WASHINGTON, NY AND CAPITALS TO ACHIEVE BLOCKING-THIRD IN PLENARY AGAINST ARTICLE 8 ADOPTED IN COMMITTEE I TODAY (TEXT SEPTTEL). PLENARY BEGINS OCTOBER 29.

2. TEXT IS IN ESSENCE COMBINATION OF TEXTS SENT REFTEL. IT WAS NEGOTIATED IN LONG SESSION WHERE WE REPEATEDLY ATTEMPTED EXPLOIT DIFFERENCES BETWEEN SPONSORS, WITH SOME HELP FROM NETHERLANDS AND POSSIBLY USSR. UK (JOHN CONFIDENTIAL

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ARCHER) "SAVED" MEETING - WHICH WAS BECOMING INCREASING-

LY CHAOTIC - BY PRESENTING CONSENSUS TEXT ESSENTIALLY THE SAME AS THAT ULTIMATELY ADOPTED, AND IN ESSENCE DISMISSING MILD SOVIET APPEAL TO TRY TO ACCOMMODATE US AND JAPAN BY STATING "IT IS CLEAR THAT NO TEXT ACCEPTABLE TO US CAN BE WRITTEN THAT SATISFIES THE USA." HAD AGREEMENT NOT BEEN REACHED, CHANCES OF DELETION OF ARTICLE 8 WOULD HAVE BEEN CONSIDERABLY GREATER. (UK LOS ADVISERS ARE EMBARRASSED AND VERY UPSET AT TEXT AND ARCHER'S ATTITUDE, BUT JACKLING AND DUDGEON ARE IN NY).

3. WHEN "COMPROMISE TEXT" PRESENTED IN COMMITTEE I, MEXICO REFUSED TO WITHDRAW ITS PROPOSAL TO DELETE ALL OF ARTICLE 8 (WHICH WE OF COURSE AND MANY MARITIME STATE SUPPORTERS OF THE "COMPROMISE TEXT" CAN ACCEPT). THE COMMITTEE VOTED TO SUSPEND THE RULE IN ORDER TO VOTE ON THE "COMPROMISE TEXT" FIRST, AND TO PROHIBIT AMENDMENTS TO THE TEXT. THE CHAIR RULED OUT DEBATE. THE TEXT WAS ADOPTED 29-10-9, WITH THE USSR, CANADA, AUSTRALIA, BRAZIL, FRG, DENMARK, SWEDEN, NORWAY, NEW ZEALAND, SPAIN, GREECE AND MANY "COASTAL STATES" IN FAVOR, AND THE US, JAPAN, ARGENTINA, PERU, ECUADOR (?) AGAINST, AND THE UK ABSTAINING UNDER HEAVY US PRESSURE.

4. THE UK THEN CALLED FOR A VOTE ON THE MEXICAN PROPOSAL TO DELETE ARTICLE 8, WITH SUPPORT FROM THE US, FRANCE, AND MEXICO. SPAIN AND CANADA OPPOSED, AND THE CHAIRMAN NOTED THERE WOULD BE NO VOTE BARRING A MOTION OF NO CONFIDENCE IN THE CHAIR. THE SESSION ENDED WITH BITTER FEELINGS ON ALL SIDES.

5. THE MAJOR PROBLEMS WITH THE TEXT ARE AS FOLLOWS: ARTICLE 8(1) IMPLIES SOME LIMITATION ON OUR RIGHT TO IMPOSE DISCHARGE STANDARDS. (THE "COASTAL STATES" DIDN'T LIKE THE QUALIFICATION "WHERE SPECIFIC CIRCUMSTANCES SO WARRANT BUT ACCEPTED IT BECAUSE INDIA WAS PUSHING IT.) ARTICLE 8(2), FIRST SENTENCE, PREVENTS US FROM IMPOSING STRICTER CONSTRUCTION STANDARDS, EVEN IN PORTS. US HINTS AT PORT STATE EXCEPTION RECEIVED NO POSITIVE RESPONSES FROM MARITIME STATES. (THERE MAY, CONFIDENTIAL

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HOWEVER, BE A MOVE TO EXCLUDE INTERNAL WATERS FROM THE SCOPE OF THE CONVENTION, AND IT APPEARS CANADA MAY INTERPRET IT THAT WAY ANYWAY.) THERE IS MOREOVER POSSIBLE QUESTION REGARDING THE COMBINED MEANING OF THIS SENTENCE AND THE WARSHIP EXEMPTION. ARTICLE 8(2), SECOND SENTENCE, HAS THE LOS PROBLEMS NOTED REFTEL, ALTHOUGH OF COURSE ARTICLE 9(2) AS ADOPTED STATES THAT LOS POSITIONS OF STATES ARE NOT PREJUDICED.

OUR SUGGESTION DURING CONSULTATIONS TO INTRODUCE CON-
CEPT OF "INTERNATIONALLY AGREED MEASURES" IN THIS SEN-
TENCE REJECTED BY CANADA, WHICH ALSO REJECTED MORE MODE-
ST JAPANESE PROPOSAL (SUGIHARA) TO ADD "INTERNATION-
ALLY" BEFORE "ACCEPTED SCIENTIFIC CRITERIA" AND
NETHERLANDS' PROPOSAL TO STATE "SCIENTIFIC CRITERIA
ACCEPTED BY THE ORGANIZATION." FINALLY, WE BELIEVE
THAT MANY OF THE "COASTAL STATES" WILL BE UNWILLING TO
RUN THE RISK OF COMPULSORY DISPUTE SETTLEMENT PROCED-
URES BEING APPLIED TO THE INTERPRETATION OF ARTICLE 8,
AS IT IS CLEAR THAT THERE WAS NO RPT NO MEETING OF THE

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ACTION EB-11

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O 192123Z OCT 73

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TO SECSTATE WASHDC IMMEDIATE 4972

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C O N F I D E N T I A L SECTION 02 OF 03 LONDON 12227

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MINDS ON THE REAL EFFECT OF THE LANGUAGE, WHICH
AT ANY RATE IS HIGHLY AMBIGUOUS.

6. WE BELIEVE THERE ARE NUMEROUS GOVERNMENTS THAT COULD NOT ON CAREFUL REFLECTION ACCEPT THIS TEXT, WITH SOME EXCEPTIONS. OBVIOUSLY, CANADA MAY HAVE MADE A TENTATIVE DECISION TO SACRIFICE THE MARITIME PROVINCES AND BRITISH COLUMBIA FOR THE ARCTIC, BUT THIS MAY BE QUITE CONTROVERSIAL IF PUBLIC ATTENTION IS CALLED TO THE MATTER. THE USSR CLEARLY WANTED IT BOTH WAYS, AND IN ESSENCE IS THE AUTHOR OF THE SECOND SENTENCE OF 8(2), WHICH AT ONE POINT IT SUGGESTED DURING CONSULTATIONS IN CONNECTION WITH A FIRST SENTENCE THAT REFERRED TO "WATERS USED FOR INTERNATIONAL SHIPPING." DENMARK SEEMS ALSO TO WANT IT BOTH WAYS.

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7. WHILE USDEL MAY MAKE ADDITIONAL SPECIFIC RECOMMENDATIONS EARLY NEXT WEEK IN LIGHT OF DISCUSSION HERE, IN THE MEANTIME, WE SUGGEST APPROACH TO HIGH LEVEL LOS OFFICIALS OF MARITIME POWERS IN NY OR CAPITALS, AS WELL AS EMBASSIES IN WASHINGTON. EMPHASIS MIGHT BE ON LOS

PROBLEM IN SECOND SENTENCE OF ARTICLE 8(2), AND BROAD BRUSH TREATMENT GENERALLY, BEARING IN MIND THEIR STRONG LIKING FOR FIRST SENTENCE OF ARTICLE 8(2). WE ALSO SUGGEST AN APPEAL TO SELECTED COASTAL STATES IN CAPITALS AND NY WITH LOS POSITIONS WE DO NOT SUPPORT, ON GROUNDS THAT TEXT PREJUDICES THEIR POSITIONS, AND THAT MATTER SHOULD BE RESOLVED AT LOS CONFERENCE. IMCO TREATY DOES NOT NEED ANY ARTICLE 8. CLEARLY, UNDER ARTICLE 8, COASTAL STATES CONCEDE ANY RIGHT TO ESTABLISH DISCHARGE STANDARDS EXCEPT "WHERE SPECIFIC CIRCUMSTANCES SO WARRANT" AND ANY RIGHT TO ESTABLISH CONSTRUCTION STANDARDS EXCEPT "IN WATERS THE PARTICULAR CHARACTERISTICS OF WHICH, IN ACCORDANCE WITH ACCEPTED SCIENTIFIC CRITERIA, RENDER THE ENVIRONMENT EXCEPTIONALLY VULNERABLE." WE MIGHT INQUIRE IN DJAKARTA IF INDONESIA PREPARED TO ACCEPT THESE RULES IN MALACCA STRAITS. WE ALSO BELIEVE ARGENTINA AND MEXICO MIGHT BE ABLE TO RALLY ACTIVE AND BROAD LATIN OPPOSITION THE LAST WEEK HERE, AND COULD BE APPROACHED IN NY TO DO SO. WE WONDER WHAT KENYA AND TANZANIA LOS PERSONNEL WOULD THINK OF TEXT.

8. IN MAKING THESE RECOMMENDATIONS, USDEL WISHES TO NOTE DANGERS IN PUSHING BLOCKING-THIRD TACTICS IN PLENARY ON CONTROVERSIAL ISSUES. WE HAVE ACHIEVED MANY IMPORTANT ENVIRONMENTAL OBJECTIVES ON CLOSE VOTES, AND THE REAL MOOD ON SOME ARTICLES ADOPTED IS FAR FROM CLEAR (E.G., WARSHIP EXEMPTION). WE BELIEVE INTENSIVE US ACTIVITY IN NY AND CAPITALS ON THIS MATTER, RATHER THAN OVERLY AGGRESSIVE ACTIVITY HERE, COULD ATTENUATE THESE DANGERS OF ENCOURAGING BLOCKING-THIRD TACTICS HERE

GENERALLY.

9. WE ALSO RECOMMEND THE DEPARTMENT EVALUATE THE
FOLLOWING IN CONSIDERING THE DEPTH OF US OPPOSITION:

(A) THE ENVIRONMENTAL STANDARDS COMING OUT OF
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COMMITTEES, WHILE NOT EVERYTHING WE WANTED, ARE REGARDED
AS VERY GOOD BY US. ACCORDINGLY, DESPITE POLITICAL
DIFFICULTIES UNDER DOMESTIC LEGISLATION, WE BELIEVE
THERE IS SOME CHANCE OF PERSUADING THE SENATE TO ACCEPT
THE TREATY, PARTICULARLY IN VIEW OF THE "LOOPHOLES" THAT
GIVE US LOS PROBLEMS.

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(B) THE MARITIME STATES ARE ANGRY WITH THE US FOR FAILING TO SUPPORT UNIFORM CONSTRUCTION STANDARDS, AND THIS WAS INTENSIFIED BY THE SUDDEN COASTAL STATE SWING ON THE ISSUE IF AN EXCEPTION WERE INCLUDED.

(C) FAILURE OF THIS CONFERENCE WILL SERIOUSLY PREJUDICE BOTH OUR JURIDICAL AND LOS BARGAINING POSITIONS, AND COULD LEAD TO UNILATERAL ACTION.

(D) THE ARTICLE 8 "PACKAGE," IF PRESENTED AS A SOLUTION AT THE LOS CONFERENCE, IS LIKELY TO BE ATTACKED FROM ALL SIDES, ALTHOUGH IT MIGHT BE WIDELY ACCEPTED AS A CONCEPTUAL OUTLINE.

(E) THE BASIC THRUST OF ARTICLE 8 IS MUCH MORE CONSISTENT WITH OUR LOS POSITION ON UNIFORM
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INTERNATIONAL STANDARDS THAN THE TREND IN THE SEABED COMMITTEE; AND MOREOVER, THE TEXT IS UNDERSTOOD HERE BY ALL TO INCLUDE THE TERRITORIAL SEA (AND PRESUMABLY STRAITS).

(F) THE PRECEDENT IN A NEW POLLUTION TREATY ON WARSHIP EXEMPTION IS LIKELY TO BE MORE USEFUL AT THE LOS CONFERENCE THAN EARLIER PRECEDENTS IN VIEW SOMEWHAT HEIGHTENED LDC INTEREST AND PARTICIPATION.
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